

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-01**

October 16, 2015

VIA ELECTRONIC MAIL

Mr. Patrick Kabat, Esq.

RE: FOIA Appeal 2016-01

Dear Mr. Kabat:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"), on behalf of your client, the Reporters Committee for Freedom of the Press ("RCFP"). In your appeal, you assert that the Metropolitan Police Department ("MPD") has failed to respond to a request the RCFP submitted to the MPD.

Background

On April 21, 2015, the RCFP submitted a request to the MPD seeking: (1) contracts pertaining to body worn camera ("BWC") hardware and software; (2) requests for proposals and other communications related to MPD's efforts to find vendors for BWC software and hardware; (3) requests for proposals and other communications related to MPD's efforts to find vendors or software for redacting BWC videos; and (4) records, including proposals, communications, contracts, and invoices related to the redaction of MPD videos posted on YouTube and MPD's website.

On October 2, 2015, you appealed to this Office MPD's failure to produce any records, arguing that in the 5 months since RCFP's original request, not a single document has been released, despite numerous assurances by MPD that a review has been underway and that responsive documents would be released on a rolling basis. Moreover, you argue that a public hearing is scheduled for October 21, 2015, on a topic that directly relates to RCFP's FOIA request, and that MPD's lengthy period of noncompliance will inhibit RCFP's ability to fully participate in that hearing.

We notified the MPD of your appeal on October 6, 2015, when we received it. Generally, an agency has 5 business days to provide this Office with a response; however, section 412.6 of Title 1 of the District of Columbia Municipal Regulations (1 DCMR § 412.6) provides that an agency may request an extension. On October 14, 2015, the MPD requested a 5-day extension to respond to your appeal. In correspondence to this Office on the same date, you submitted a formal opposition to the granting of an extension. You argue that MPD's request for an extension is untimely and inappropriate given MPD's failure to produce any records.

Discussion

It is the public policy of the District of Columbia that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534. Under the DC FOIA, an agency is required to disclose materials only if they were “retained by a public body.” D.C. Official Code § 2-502(18).

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of your appeal is MPD’s failure to provide any documents responsive to a request RCFP submitted in April 2015. RCFP’s request seeks two categories of documents: (1) procurement records related to providers of BWC hardware and software, and invoices pertaining to redactions of MPD videos; and (2) communications related to MPD’s efforts to find vendors for BWC software and hardware. With respect to the first category of records, an MPD FOIA officer notified your client in an email dated April 30, 2015, that for “actual contracts and RFPs for BWC hardwar[e] and software, you should submit a FOIA request with the Office of Contracting and Procurement (OCP) as OCP provides contracting services to MPD.”¹ It appears that RCFP has not requested this information from OCP in the intervening months. As a courtesy, in light of the BWC hearing scheduled for October 21, 2015, this Office contacted OCP and asked it to produce the contracting records you seek on an expedited basis. OCP has already provided this Office with the solicitation, offer, and award to Taser International Inc., which we will provide to you under separate cover.

With respect to the second category of records RCFP requested, MPD has indicated in previous correspondence with you/ your client that it has completed its search and identified approximately 40,000 pages of documents. MPD has further indicated that it has been reviewing these documents to release them to RCFP on a rolling basis.

Conclusion

Based on the circumstances here, and specifically the nearly 6-month delay in producing any documents to RCFP, we will forego our normal practice of permitting an agency to invoke an extension to respond to an appeal. We direct MPD to immediately begin releasing the non-procurement documents in its possession that are responsive to RCFP’s requests.

¹ *See* Exhibit G of your appeal.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor's Office of Legal Counsel

cc: Ronald Harris, Deputy General Counsel, MPD (via email)